

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

**January 19, 2016 at 10:00 a.m.**

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No written opposition has been filed to the following motions set for argument on this calendar:

2, 3, 9, 10, 14

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. If you wish to oppose a motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If there is no opposition, the moving party should inform Judge McManus if it declines to accept the tentative ruling. Do not make your appearance or explain why you do not accept the ruling. If you do not accept the ruling, Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion and if the moving party does not reject the tentative ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

**MOTIONS ARE ARRANGED ON THIS CALENDAR IN TWO SEPARATE SECTIONS. A CASE MAY HAVE A MOTION IN EITHER OR BOTH SECTIONS.** THE FIRST SECTION INCLUDES ALL MOTIONS THAT WILL BE RESOLVED WITH A HEARING. A TENTATIVE RULING IS GIVEN FOR EACH MOTION. THE SECOND SECTION INCLUDES ALL MOTIONS THAT HAVE BEEN RESOLVED BY THE COURT WITHOUT A HEARING. A FINAL RULING IS GIVEN FOR EACH MOTION. WITHIN EACH SECTION, CASES ARE ORGANIZED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

**ITEMS WITH TENTATIVE RULINGS:** IF A CALENDAR ITEM HAS BEEN SET FOR HEARING BY THE COURT PURSUANT TO AN ORDER TO SHOW CAUSE OR AN ORDER SHORTENING TIME, OR BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(1) OR LOCAL BANKRUPTCY RULE 9014-1(f)(1), AND IF ALL PARTIES AGREE WITH THE TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS AND CONCLUSIONS.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(2) OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED

January 19, 2016 at 10:00 a.m.

**TO DEVELOP THE WRITTEN RECORD FURTHER.**

**IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON FEBRUARY 16, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 1, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 8, 2015. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.**

**ITEMS WITH FINAL RULINGS: THERE WILL BE NO HEARING ON THE ITEMS WITH FINAL RULINGS. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING ALSO WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.**

**ORDERS: UNLESS THE COURT ANNOUNCES THAT IT WILL PREPARE AN ORDER, THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER WITHIN 14 DAYS OF THE HEARING.**

### **MATTERS FOR ARGUMENT**

1. 09-47201-A-7 DAVINDER KAUR MOTION TO  
WW-2 AVOID JUDICIAL LIEN  
VS. SAHERINDER KAUR 12-31-15 [23]

**Tentative Ruling:** The motion will be denied without prejudice.

The debtor seeks to avoid a judicial lien encumbering his home in Sacramento, California.

The motion will be denied because the supporting declaration refers to an Exhibit A, the abstract of judgment, but there are no exhibits attached to the motion or the supporting declaration, nor was it filed as a separate document. Accordingly, the court does not have sufficient admissible and probative evidence of the purported lien.

2. 11-37803-A-7 ALAN/SABRINA TANNER MOTION TO  
SPB-7 AVOID JUDICIAL LIEN  
VS. BENEFICIAL CALIFORNIA, INC. 1-4-16 [84]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

A judgment was entered against debtor Sabrina Tanner in favor of Beneficial California, Inc. for the sum of \$10,887.94 on October 27, 2008. The abstract of judgment was recorded with Butte County on February 10, 2009. That lien attached to the debtor's residential real property in Oroville, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$185,182 as of the petition date. Dockets 86 & 1. The unavoidable liens totaled \$367,159.73 on that same date, consisting of a first mortgage for \$261,304.52 in favor of GMAC, a second mortgage for \$95,184.91 in favor of Specialized Loan Servicing, and a third mortgage for \$10,670.30 in favor of Dyck-O-Neal, Inc. Dockets 87 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Amended Schedule C. Docket 65.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B). No other relief will be awarded.

3. 11-37803-A-7 ALAN/SABRINA TANNER MOTION TO  
SPB-8 AVOID JUDICIAL LIEN  
VS. DIRECT MERCHANTS CREDIT CARD BANK, N.A. 1-4-16 [89]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

A judgment was entered against debtor Sabrina Tanner in favor of Direct Merchants Credit Card Bank for the sum of \$3,224.88 on April 1, 2009. The abstract of judgment was recorded with Butte County on November 16, 2010. That lien attached to the debtor's residential real property in Oroville, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$185,182 as of the petition date. Dockets 91 & 1. The unavoidable liens totaled \$367,159.73 on that same date, consisting of a first mortgage for \$261,304.52 in favor of GMAC, a second mortgage for \$95,184.91 in favor of Specialized Loan Servicing, and a third mortgage for \$10,670.30 in favor of Dyck-O-Neal, Inc. Dockets 92 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Amended Schedule C. Docket 65.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B). No other relief will be awarded.

4. 15-27904-A-7 GERT JONSSON AND EVELYN MOTION TO  
MRL-1 LAWSON AVOID JUDICIAL LIEN  
VS. CAPITAL ONE BANK (USA), N.A. 1-5-16 [23]

**Tentative Ruling:** The motion will be denied without prejudice.

A judgment was entered against the debtor Gert Jonsson in favor of Capital One Bank for the sum of \$3,055.46 on March 5, 2014. The abstract of judgment was recorded with El Dorado County on April 7, 2014. That lien attached to the debtor's residential real property in Cameron Park, California. The debtor is seeking avoidance of the lien.

The subject real property had an approximate value of \$609,000 as of the petition date. Dockets 25 & 1. The unavoidable liens totaled \$482,111.87 on that same date, consisting of a mortgage in favor of Nationstar in the amount of \$380,526.45, a mortgage in favor of Nationstar in the amount of BCAT 2015-

14BTT, c/o Wilmington Savings Fund Society, FSB for \$99,443.42, and a tax lien in favor of the California Franchise Tax Board in the amount of \$2,142. Dockets 25 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$129,303.13 in Amended Schedule C. Docket 28.

However, the motion will be denied because the debtor amended Schedule C on January 5, 2016, altering the exemption in the subject property, but did not serve the Amended Schedule C on any of the creditors, informing them of the changed exemption. Dockets 28 & 29. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied.

5.	15-20912-A-7     DAVID ROOT MAC-4 VS. CACH, L.L.C.	MOTION TO AVOID JUDICIAL LIEN 12-21-15 [45]
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**Tentative Ruling:**     The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of CACH, LLC for the sum of \$36,221.25 on August 9, 2012. The abstract of judgment was recorded with Sacramento County on October 5, 2012. That lien attached to the debtor's residential real property in Carmichael, California. The debtor is seeking avoidance of the lien.

The subject real property had an approximate value of \$300,000 as of the petition date. The unavoidable liens totaled \$341,210.81 on that same date, consisting of a single mortgage in favor of Green Tree Servicing. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Amended Schedule C. Docket 42.

The motion will be denied because the debtor amended his Schedule C on December 21, 2015, to add an exemption in the subject property, but did not serve the Amended Schedule C on any of the creditors, informing them of the added exemption. Dockets 42 & 44. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied.

6.	15-20912-A-7     DAVID ROOT MAC-5 VS. PSS WORLD MEDICAL, INC.	MOTION TO AVOID JUDICIAL LIEN 12-21-15 [54]
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**Tentative Ruling:**     The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of PSS World Medical, Inc. for the sum of \$9,267 on August 30, 2010. The abstract of judgment was recorded with Sacramento County on September 28, 2010. That lien attached to the debtor's residential real property in Carmichael, California. The debtor seeks avoidance of the lien.

The subject real property had an approximate value of \$300,000 as of the petition date. The unavoidable liens totaled \$341,210.81 on that same date, consisting of a single mortgage in favor of Green Tree Servicing. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Amended Schedule C. Docket 42.

The motion will be denied because the debtor amended his Schedule C on December 21, 2015, to add an exemption in the subject property, but did not serve the Amended Schedule C on any of the creditors, informing them of the added exemption. Dockets 42 & 44. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied.

7. 15-27228-A-7 GARY PATRICK MOTION TO  
JSO-1 AVOID JUDICIAL LIEN  
VS. MARK LEGARRA 12-16-15 [23]

**Tentative Ruling:** The motion will be denied without prejudice.

A judgment was entered against the debtor in favor of Mark Legarra for the sum of \$273,000 on June 12, 2009. The abstract of judgment was recorded with Shasta County on June 26, 2009. That lien attached to the debtor's residential real property in Redding, California. The debtor seeks avoidance of the lien.

The subject real property had an approximate value of \$160,000 as of the petition date. Dockets 25, 20, 1. The unavoidable liens totaled \$49,000 on that same date, consisting of a single mortgage in favor of Tri Counties Bank. Dockets 25, 20, 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$175,000 in Schedule C. Dockets 25 & 1.

However, the motion will be denied because the debtor has not established entitlement to his \$175,000 exemption claim in the property. The debtor must establish entitlement to the exemption even if there has been no timely exemption objection. See Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9<sup>th</sup> Cir. 1993). The supporting declaration makes no effort to establish the factual requirements for an exemption claim under section 704.730(a)(3). Docket 25.

8. 12-21930-A-7 KELLY/SHERRY BUTLER MOTION TO  
MKJ-2 COMPEL ABANDONMENT  
12-29-15 [27]

**Tentative Ruling:** The motion will be denied without prejudice.

The debtors request an order compelling the trustee to abandon the estate's interest in a personal injury lawsuit. The case was closed on May 4, 2012, after the debtors received their chapter 7 discharge on April 30, 2012. But, the debtors moved for reopening of the case on December 15, 2015, in order to amend their schedules to add the lawsuit to their schedules. On December 21, 2015, the debtors amended their Schedule B, listing the lawsuit as having a value of "unknown" and claiming an exemption in an Amended Schedule C under Cal. Civ. Proc. Code § 704.140, also with a value of "unknown." Docket 22.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The motion will be denied. The debtors have not established that the lawsuit is burdensome or of inconsequential value to the estate. Cal. Civ. Proc. Code § 704.140(b) limits the debtors' exemption "to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment

debtor."

As the debtors have not assigned a certain value to the lawsuit and have not shown what portion of the lawsuit proceeds will be "necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor," the court is not convinced that the lawsuit should be ordered abandoned.

Given the exemption limitations of Cal. Civ. Proc. Code § 704.140, the debtors have not exempted the lawsuit in its entirety. They have exempted only what that statute permits, "to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor."

Yet, there is no showing in the motion what would be necessary for support, within the meaning of Cal. Civ. Proc. Code § 704.140. The motion's supporting declaration merely states that the lawsuit has been claimed as exempt in full. It does not say anything about necessary support. Docket 29.

Further, the trustee and other parties in interest have 30 days from the amendment of Schedule C to object to the exemption claim. Fed. R. Bankr. P. 4003(b)(1). Schedule C was amended by the debtors on December 21, 2015, meaning that an objection to the exemption can be filed as late as January 20, 2016. And, the trustee filed a notice of assets on December 29, 2015, meaning she has determined that there is value in the lawsuit.

In light of the foregoing, the motion will be denied.

9.	14-22238-A-7    LARRY/CARMEN MCCARREN SSA-4	MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 12-23-15 [132]
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**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the trustee's counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

Law Offices of Steven Altman, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$2,190 in fees and \$127.96 in expenses, for a total of \$2,317.96. This motion covers the period from April 20, 2015 through the present. The court approved the movant's employment as the trustee's attorney on May 6, 2015. In performing its services, the movant charged an hourly rate of \$300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) negotiating settlement of claims against

Farmers Insurance, (2) preparing and prosecuting settlement approval motion, and, (3) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

10. 15-22750-A-7 JOSE CHAVEZ  
HSM-4

MOTION TO  
APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY  
12-29-15 [29]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the trustee's counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

Hefner, Stark & Marois, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$6,840 in fees and \$0.00 in expenses. This motion covers the period from May 7, 2015 through the present. The court approved the movant's employment as the trustee's attorney on June 10, 2015. In performing its services, the movant charged an hourly rate of \$300.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) analyzing and advising the trustee about the debtor's homestead exemption, (2) negotiating and preparing stipulation for extension of the exemption objection deadline, (3) negotiating exemption issues with the debtor, (4) preparing settlement with the debtor, (5) preparing and prosecuting a compromise motion over the homestead exemption settlement, (6) advising the trustee about proof of claim issues, (7) advising the trustee about the general administration of the estate, and (8) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

11. 12-38363-A-7 WILLIAM ST CLAIR  
BLL-8

OBJECTION TO  
EXEMPTIONS  
11-24-15 [298]

**Tentative Ruling:** The objection will be overruled.

The trustee objects to the debtor's October 26, 2015 exemption of a 2008 BigTex



Dump Trailer and 1955 Buick vehicle, arguing that the debtor concealed the property from the court and that he is estopped from claiming not to own the property.

The objection is timely as it was filed on November 24, 2015, 29 days after the debtor filed his amended schedules B and C. Docket 277; Fed. R. Bankr. P. 4003(b) (1).

The objection will be overruled. It is principally a disguised effort to determine the validity, priority and extent of the debtor's interest in the 2008 BigTex Dump Trailer and the Buick vehicle.

The trailer as identified by the trustee in this objection - 2008 BigTex Dump Trailer - is not listed in the debtor's October 26 amended schedules B and C. Those schedules list and claim as exempt only a "box trailer," which the trustee admits is different from the 2008 BigTex Dump Trailer. There is no mention of a 2008 BigTex Dump Trailer in the October 26 schedule amendments. Docket 277.

Further, if the 2008 BigTex Dump Trailer is the scheduled "box trailer," the box trailer was not disclosed in the October 26, 2015 amendments. The debtor disclosed the box trailer for the first time in Amended Schedule B filed on January 14, 2013, three months after the October 16, 2012 petition was filed. Docket 62. In January 2013, the movant was not the trustee in this case, as the case was still being prosecuted as a chapter 13 proceeding. Thus, the trustee did not discover the 2008 BigTex Dump Trailer.

The debtor could not have concealed the Buick either because, while he scheduled and exempted the vehicle in the October 26 amendments, he does not claim to own the vehicle. Conversely, the debtor's October 26 amended schedules state that the "VEHICLE WAS NOT LISTED AT THE TIME OF FILING BECAUSE HE HAD GIFTED IT TO HIS DAUGHTER IN 1999. VEHICLE IS SCHEDULED IN THE EVENT THE COURT DETERMINES IT IS STILL THE DEBTOR'S PROPERTY." Docket 277.

And, nothing prevents the debtor from claiming an exemption in property he may not or does not own. An exemption in property does not substantiate or negate ownership interest in the property. It is irrelevant to establishing or negating ownership interest. For instance, the debtor could have claimed as exempt the White House. Such a claim would have had no impact on his ownership interest in the White House.

For the same reason, the court rejects the argument that the debtor should be estopped from denying ownership interest in the Buick - because he claimed to own the vehicle in a state court action filed on September 12, 2014. This is an objection to an exemption. It is not a request to determine the validity, priority and extent of the debtor's interest in the Buick vehicle. Such relief requires an adversary proceeding. Fed. R. Bankr. P. 7001(2).

The court makes no determination about whether or to what extent the debtor or the estate own the 2008 BigTex Dump Trailer and the Buick. The court also makes no determination about whether the 2008 BigTex Dump Trailer is in actuality the "box trailer" identified in several amendments of the debtor's schedules. Dockets 62 & 277.

12. 11-34464-A-7 STUART SMITS APPLICATION AND ORDER TO  
11-2636 APPEAR FOR EXAMINATION  
BARDIS V. SMITS (STUART LANSING SMITS)  
10-14-15 [61]

**Tentative Ruling:** None. The respondent and judgment debtor shall appear and be sworn in prior to the court's January 19, 2016 10:00 a.m. calendar.

13. 15-27466-A-7 PRAMTESH/RANJANA MAHARAJ MOTION TO  
TAG-2 AVOID JUDICIAL LIEN  
VS. LVNV FUNDING, L.L.C. 12-17-15 [24]

**Tentative Ruling:** The motion will be denied.

A judgment was entered against the debtor Pramtesh Maharaj in favor of LVNV Funding, LLC for the sum of \$4,028.05 on February 27, 2009. The abstract of judgment was recorded with Yolo County on April 3, 2009.

The debtor contends that the lien attached to the debtor's personal property listed in Schedule B, including, without limitation, a vehicle.

The motion will be denied as there is no evidence that the judicial lien encumbers the debtor's personal property. The recordation of an abstract of judgment creates a judicial lien only against real property, located in the county where the abstract is recorded, and it does not create a lien against personal property. Liens on personal property are created by filings with the California Secretary of State. The record on this motion contains no evidence of such filings. Accordingly, the motion will be denied.

14. 15-23876-A-7 RUBEN REYNOSO MOTION TO  
PA-8 APPROVE COMPENSATION OF AUCTIONEER  
12-28-15 [69]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the trustee on behalf of West Auctions, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The trustee, on behalf of West Auctions, auctioneer for the estate, requests compensation consisting of \$1,374.40 in fees and \$75 in expenses, for a total of \$1,449.40. This motion is for an online auction sale held from December 1 through 3, 2015. The court approved the West's employment as the trustee's auctioneer for the subject sale on November 2, 2015. The requested compensation is based on a 20% commission and reimbursement of document processing expenses.

West was employed by the trustee previously, on September 18, 2015, to sell

other personal property items, including the subject ditcher. Although West was unable to sell the ditcher in the prior online auction, it sold the ditcher in the December 1 through 3 auction.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included the sale of a snowmobile, ditcher, triplane and harvester.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The compensation will be approved.

15. 15-28695-A-7 TIMOTHY/EMMA ARIAS MOTION TO  
SKS-1 DISMISS CASE  
12-17-15 [11]

**Tentative Ruling:** The motion will be granted and the case will be dismissed as to Emma Arias, whereas the case will remain pending as to Timothy Arias.

The trustee moves for dismissal because neither of the debtors attended the meeting of creditors held on December 16, 2015.

The debtors have not satisfactorily explained Emma Arias' failure to appear at the meeting of creditors, except to say that the debtors are now separated and that Emma Arias no longer lives at the address where the notice of meeting was mailed. It was her obligation to keep the court apprised of her current address. Thus, Emma Arias' failure to attend the meeting has caused *unreasonable* delay that is prejudicial to creditors. This is cause for dismissal as to her. See 11 U.S.C. § 707(a)(1).

On the other hand, as to Timothy Arias, the case will remain pending. Mr. Arias was apparently taking care of his quite ill mother, who had been admitted into the hospital on December 13 for four to five days. Mr. Arias' mother was first hospitalized on or about November 6, 2015, when she had a stroke. This led to multiple hospitalizations and transfers to rehabilitation and long term care facilities, in the months of November and December 2015.

However, because the meeting of creditors was continued to January 27, 2016 (at 3:30 p.m.), the court will order that the deadlines for filing complaints under sections 523 and 727 and filing motions to dismiss under section 707 be extended to 60 days after the continued meeting date. The deadlines will be extended to March 28, 2016.

16. 15-27197-A-7 ROBERT/KAREN WICKHAM MOTION TO  
SLC-1 SELL  
12-29-15 [18]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the United States Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling,

rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The chapter 7 trustee requests authority to sell in the open securities market the estate's interest in 1.5 million of unencumbered penny stock shares, in Praxsyn Corporation. The per share market value at the close of the market on December 28, 2015 was \$0.0076.

The trustee also asks for authority to employ Securities America, Inc. as the broker that will sell the securities and for authority to pay the customary sales commission, pay a service fee charged by the clearing firm National Financial Services, LLC, and pay any other usual and standard costs associated with the sale. The trustee represents that the sale costs will not exceed \$1,000.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business.

The sale will generate some proceeds for distribution to creditors of the estate. At the sales price of \$0.0076 per share, the estate will gross approximately \$11,400 in proceeds. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will approve the employment of Securities America, Inc. and will authorize payment of the sale costs.

**FINAL RULINGS BEGIN HERE**

17. 14-29813-A-7 LISA AHRENS AMENDED OBJECTION TO  
DNL-2 CLAIM  
VS. GOLDEN ONE CREDIT UNION 10-23-15 [26]

**Final Ruling:** The hearing on this objection has been continued to February 29, 2016 at 10:00 a.m. Docket 54.

18. 15-29418-A-7 CHARLES/HEATHER BARBERA MOTION FOR  
APN-1 RELIEF FROM AUTOMATIC STAY  
SANTANDER CONSUMER USA, INC. VS. 12-16-15 [9]

**Final Ruling:** This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2013 Chrysler Town & Country. The movant has produced evidence that the vehicle has a value of \$17,325 (\$15,925 in Schedule B) and its secured claim is approximately \$23,939. Docket 11.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. And, the movant already has possession of the vehicle.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.

19. 15-28455-A-7 COMFORT OLADIMEJI MOTION FOR  
MDE-1 RELIEF FROM AUTOMATIC STAY  
TOYOTA MOTOR CREDIT CORP. VS. 12-9-15 [20]

**Final Ruling:** This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14

days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be dismissed as moot.

The movant, Toyota Motor Credit Corporation, seeks relief from the automatic stay with respect to a 2012 Toyota Camry vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on October 30, 2015 and a meeting of creditors was first convened on December 9, 2015. Therefore, a statement of intention that refers to the movant's property and debt was due no later than November 29. The debtor filed a statement of intention on the petition date, indicating an intent to retain the vehicle and reaffirm the debt secured by the vehicle.

11 U.S.C. § 521(a)(2)(B) requires that a chapter 7 individual debtor, within 30 days after the first date set for the meeting of creditors, perform his or her intention with respect to such property.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor indicated an intent to retain the vehicle and reaffirm the debt secured by the vehicle, the debtor did not do so. And, no motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on January 8, 2016, 30 days after the initial meeting of creditors.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a "no-asset" report on

December 12, 2015, indicating an intent not to administer the vehicle or any other assets.

Therefore, without this motion being filed, the automatic stay terminated on January 8, 2016.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

20. 15-25167-A-7 ERIC/KIMBERLY BONNIKSEN MOTION TO  
HLG-3 AVOID JUDICIAL LIEN  
VS. CACH, L.L.C. 12-11-15 [31]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against the debtor Eric Bonniksen in favor of CACH, LLC for the sum of \$25,282.39 on November 19, 2014. The abstract of judgment was recorded with El Dorado County on June 15, 2015. That lien attached to the debtor's residential real property in Camino, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$420,000 as of the petition date. Dockets 30 & 34. The unavoidable liens totaled \$322,403 on that same date, consisting of a single mortgage in favor of Bank of America. Docket 34. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000 in Schedule C. Dockets 33 & 34.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

21. 15-27693-A-7 REMOUS/DIANE BARNES ORDER TO  
SHOW CAUSE  
12-23-15 [19]

**Final Ruling:** The order to show cause will be discharged and the petition will

remain pending.

This order to show cause was issued because the debtor filed an Amended Schedule D on December 9, 2015 but did not pay the \$30 filing fee. However, the debtor paid the fee on December 31, 2015. No prejudice has resulted from the delay.

22. 15-20394-A-7 GARY SCHNEIDER MOTION TO  
HCS-3 APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY  
12-21-15 [31]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Herum\Crabtree\Suntag, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$7,500 in fees - reduced from \$7,805.50 - and \$158.53 in expenses, for a total of \$7,658.53. This motion covers the period from March 13, 2015 through the present. The court approved the movant's employment as the trustee's attorney on March 25, 2015. In performing its services, the movant charged hourly rates of \$90, \$225, \$275 and \$325.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) analyzing the debtor's exemptions, (2) analyzing and advising the trustee on issues pertaining to a federal tax lien on estate property, (3) analyzing and advising the trustee about a preferential transfer, (4) negotiating settlement of the preferential transfer claim, (5) preparing and prosecuting motion to approve settlement, and (6) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

23. 15-29497-A-7 PATRICE LAZZARI ORDER TO  
SHOW CAUSE  
12-22-15 [11]

**Final Ruling:** The order to show cause will be discharged and the petition will remain pending.

This order to show cause was issued because the debtor did not pay the petition filing fee of \$335, as required by Fed. R. Bankr. P. 1006(a), and did not apply



to pay the fee in installments. However, after a later-filed motion for waiver of the filing fee, the court entered an order on January 11, 2016 permitting payment of the fee in installments. Docket 19.

24.	13-20898-A-7	CORNEL/TINA VANCEA	MOTION FOR
	BHT-1		RELIEF FROM AUTOMATIC STAY
	WILMINGTON TRUST, N.A. VS.		12-8-15 [221]

**Final Ruling:** The motion will be dismissed without prejudice as it has not been served on the trustee's counsel, Howard Nevins. See Dockets 13 & 227.